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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 557

Case No. 592: SAGAF-LARRABURE

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Hubert Thierry; Mr. Mikuin Leliel Balanda;

Whereas at the request of Kamaria Sagaf-Larrabure, a staff member of the United Nations Development Programme, hereinafter referred to as UNDP, the President of the Tribunal suspended, under article 7, paragraph 5 of its Statute, the time-limit for the filing of an application to the Tribunal, until 31 March 1991;

Whereas, on 27 March 1991, the Applicant filed an application containing the following pleas:

"II. PLEAS

The Administrative Tribunal is respectfully requested:

(a) To set aside the decision of the Secretary-General; and

(b) To convert the Applicant's appointment from the General Service to the Professional category; and

(c) To have the Applicant granted without any further screening by any advisory body, based on the facts below, a core international post at the Professional level;

(d) To grant the Applicant seniority at the P-2 level as of October 1986 when this conversion should have taken place; and

(e) To grant any other relief as may be determined by the Administrative Tribunal."

Whereas the Respondent filed his answer on 23 August 1991;

Whereas the Applicant filed written observations on 27 November 1991;

Whereas at the Respondent's request and with the agreement of the President of the Tribunal, the Respondent filed a response to the Applicant's written observations on 3 January 1992;

Whereas the Applicant submitted comments on the Respondent's submission on 23 March 1992;

Whereas, on 20 April 1992, the Respondent filed a supplementary document in response to which, on 14 May 1992, the Applicant filed comments and further documentation;

Whereas, on 12 June 1992, the Tribunal put questions to the Respondent, to which he replied on 15 and 19 June 1992;

Whereas the facts in the case are as follows:

Kamaria Sagaf-Larrabure, a national of the Comoros, entered the service of UNDP on 20 July 1977. She was granted a three-month fixed-term appointment as a locally recruited Clerk/Typist/Receptionist/Switchboard Operator in the UNDP Office in the Comoros at level 5, step V. On 1 November 1977, the Applicant received a further fixed-term appointment of one year and was promoted to level 6 as Programme Assistant. The Applicant's appointment was subsequently extended for further fixed-term periods until 31 October 1983. She was promoted to level 7, with effect from 1 January 1981. Her functional title was changed to Senior Programme Assistant. On 1 November 1983, she was granted a probationary appointment and on 1 February 1985, a permanent appointment.

On 29 March 1986, the Applicant was detailed for a three-month period to the UNDP Office in Nouakchott (Mauritania) while retaining her post at level 7 in the Comoros. In a cable dated 11 April 1986, the Chief, Staff Development and Placement Section, Division of Personnel (DOP), informed the Resident Representative in Mauritania that if he was fully satisfied with the Applicant's "performance and potential", DOP would recommend to the Appointment and Promotion Board (APB), a conversion of the three-month detail to a "regular fixed-term assignment" in Nouakchott.

In a reply dated 27 May 1986, the Officer-in-Charge of the UNDP Office in Nouakchott informed Headquarters of his "entire satisfaction" with the Applicant's performance. He recommended that the Applicant's case be presented to the APB for the conversion of her assignment to a "regular fixed-term assignment" in Nouakchott. He also recommended her appointment at the P-2 level, in the light of her nine years of programme experience. The Applicant's assignment in Nouakchott was extended for two months pending action by the APB.

According to information provided by the Respondent during the Joint Appeals Board proceedings, DOP recommended to the APB, at its meeting held on 11 August 1986, that the Applicant be granted a Professional appointment under the 100 Series of the Staff Rules. The APB did not endorse the recommendation. However, "the Director of Personnel, under the authority vested in him, under UNDP's Appointment and Promotion Guidelines", offered the Applicant a one-year fixed-term appointment at the L-2, step III level under the 200 Series of the Staff Rules, as Associate Project Management Officer in the Office of Projects Execution, New York. Her status would be converted from local (Comoros) to international, for the period of that appointment and she would retain a lien on her local post in the Comoros. On completion of the assignment, the Applicant would revert to local status at the appropriate grade and step.

The Applicant accepted the offer and signed a Letter of Appointment for a fixed-term of one year at the L-2, step III level. This appointment was extended for further fixed-term periods of one year, through 1 October 1988, and then through 9 May 1990. On 11 May 1989, the Applicant was assigned from New York to the UNDP Office in Georgetown (Guyana). Her functional title for this assignment was changed to Programme Support/Liaison Officer.

On 23 May 1989, DOP recommended to the APB the extension of the Applicant's L-2 appointment. According to the minutes of the meeting, the APB did not endorse the recommendation. In a letter dated 13 July 1989, the Director of Personnel explained to the Applicant that the APB had "carefully studied [her] case and noted that [she did] not have the academic credentials

normally needed for a management career with UNDP". He suggested that she "obtain a Master's degree in a development related field under [UNDP's] Educational Assistance Programme". She could then "be interviewed by the Management Training Programme panel system" in order to improve her prospects of obtaining a "core career post within UNDP". He added: "In the meantime and in consultation with OPS [Office of Personnel Services], we have extended your current 200 Series of Staff Rules (and thereby temporary) contract with UNDP from 2 October 1988 through 9 May 1990. Subject to good performance, we see no reason why this kind of employment should not continue under the CARICOM [Caribbean Community] project". He emphasized however "that without all prerequisite credentials and [her] successfully passing this screening process", there was "little likelihood of career employment with UNDP after completion of [her] CARICOM related attachment".

The Applicant's appointment as Programme Support/Liaison Officer was then extended for two years, through 9 May 1992, with effect from 10 May 1990. According to information furnished to the Tribunal during its consideration of the case, subject to medical clearance, the Applicant's appointment will be extended for a further fixed-term period of one year at the L-2, step IX level.

On 25 August 1989, the Applicant requested review of the decision taken, with respect to her contractual status, in May 1989. The Applicant emphasized her positive performance with UNDP, and asserted that her Diplôme d'études supérieures de journalisme was the equivalent of a Master's degree. She also referred to certain General Service staff members who had been promoted to the Professional category even though they did not have a Master's degree and alleged that this amounted to discrimination against her.

On 15 November 1989, at the request of the Administrator, the Director of Personnel explained that UNDP had, over the years "endeavoured to assist [the Applicant], by first employing [her] in New York to facilitate [her] situation at that time, and by exceptionally continuing that employment even after [her] case was turned down by the Appointment and Promotion Board". He also noted that "very special efforts were made to ensure that [she was] employed in [her] new environment" when her husband was transferred to Guyana as UNDP Resident Representative.

On 16 November 1989, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 18 September 1990. Its considerations, conclusions and recommendation read as follows:

"Considerations

24. The Panel had to determine whether the decision not to grant the appellant a conversion of appointment from the General Service to the Professional category violated her rights.

25. The Panel first defined the parameters of its deliberations. It noted that, under the provisions of staff rule 111.2(k), it was not permitted 'to consider the substantive question of efficiency but only evidence that the decision was motivated by prejudice or some other extraneous factor'. ...

26. The Panel observed that the appellant herself does not claim a violation of due process: nor could it find a lack of the same upon its own examination of the documentation presented to it. UNDP's inconsistency in describing the appellant's case (in one instance it was defined as a case of 'appointment' or 'extension of appointment', and not 'promotion', in another as one of 'conversion of the appellant's contractual status', or promotion from the General Service to the Professional category) was not, in the eyes of the Panel, of a sufficiently substantive nature to warrant a finding that the appellant was not afforded due process. Under the Staff Rules and Regulations, the appellant only had a right to be considered for a core post at the professional level, and the Panel was satisfied that her case had been given due consideration.

27. The Panel also addressed the question of prejudice. In this connection, it noted that the appellant contends that UNDP discriminated against her in view of the fact that other General Service staff who did not have M.A. degrees had been promoted to the Professional level in 1989, [but concluded,] however, that her allegations are not substantiated by any evidence. To the contrary, the Panel noted that efforts were made to accommodate the appellant. Not only was she encouraged to obtain a Master's degree in a development related field, with partial UNDP funding, but also, UNDP indicated several times that, upon completion of her degree, she would become eligible for consideration by the MTP [Management Training Programme] panel system. Bearing in mind the findings of the Tribunal in the Cooperman case (Judgement No. 93), the Panel found that the appellant did not successfully carry the burden of proving prejudice or improper motivation.

Conclusions and recommendation

28. The Panel concludes that the appellant was afforded due process and that the contested decision was not tainted by prejudice or improper motivation.

29. Therefore, the Panel makes no recommendation in support of the appeal."

On 21 September 1990, the Under-Secretary-General for Administration and Management informed the Applicant that:

> "The Secretary-General, having re-examined your case in the light of the Board's report, has decided to maintain the contested decision and to take no further action on your case".

On 25 March, 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was never informed of the reasons for the first (1986) decision not to change her contractual status. She did not know the significance for her career of undertaking studies leading to a Master's degree.

2. The Applicant was discriminated against, since certain General Service staff members who did not have Master's degrees had been promoted to the Professional category.

3. The decision by the Administrator in 1989 was unreasonable because of the high quality of the Applicant's performance during her employment with UNDP, and because her record showed that she was capable of carrying out professional-level duties.

Whereas the Respondent's principal contentions are:

1. The decision in 1986 rejecting the Applicant's candidacy for a career-track appointment in the Professional category under the 100 Series of the Staff Rules is not before the Tribunal. The Applicant never sought review of the 1986 decision, and any attempt to challenge it is time-barred.

2. The Applicant did not meet the requirements for a career-track Professional category appointment under the 100 Series of the Staff Rules.

3. The Applicant did not meet the qualifications for a career-track Professional category appointment.

4. The Applicant was not denied due process.

The Tribunal, having deliberated from 12 to 29 June 1992, now pronounces the following judgement:

I. In the light of the information supplied by the parties, it appears that the Applicant, who was a locally recruited General Service staff member, began taking steps in 1985 to obtain international status, which would clear the way for her appointment to a core post at the Professional level.

Her case was considered initially in 1986 by the Appointment and Promotion Board (APB), which turned it down. The Applicant contends that she was never informed of this decision and came to know of it only in 1989. She claims therefore to have been deprived of the possibility of contesting the decision within the specified time-limit. The Respondent contends that the Administration was under no obligation to notify the Applicant of this decision but maintains that she was nevertheless informed of it by her administrative superiors. The Tribunal believes that it is not for the Tribunal to settle such questions or, furthermore, to rule on whether an appeal presented out of time against the 1986 decision would be receivable. According to the Applicant's pleas in the present case, as they are quoted above, "the Administrative Tribunal is respectfully requested: (a) to set aside the decision of the Secretary-General ...". Although the date and nature of this decision are not specified, it follows, both from the arguments made in her application and from the Respondent's contentions, that the decision in question is the one by which the Secretary-General on 21 September 1990, approved the report adopted by the Joint Appeals Board (JAB) on 18 September 1990. The 1986 decision is therefore not before the Tribunal, which consequently cannot rule on it.

II. The Tribunal notes that the the Applicant's case was again submitted to the APB in 1989. The file shows, however, that the nature of the APB recommendation, at its meeting of 23 May 1989, is subject to different interpretations. From a confidential letter addressed to her by the Chief of

the Division of Personnel on 13 July 1989, the Applicant gained the impression that the APB had again ruled on a possible promotion to the Professional category and, on that basis, requested review of the decision and lodged an appeal with the JAB. The Respondent, relying on a subsequent letter from the Chief of the Division of Personnel, dated 15 November 1989, and on other material, particularly the APB recommendation, as recorded in the minutes of the 23 May 1989 meeting, maintains that the APB acted not on the Applicant's possible promotion but on the extension of her appointment under the 200 Series of the Staff Rules. In view of the fact that her appointment was in fact renewed despite the negative recommendation of the APB, the Applicant's request would be devoid of purpose.

The Tribunal has every reason to believe that the Applicant was misled into submitting her application, which serves no purpose, by the confidential letter of the Chief of the Division of Personnel dated 13 July 1989.

III. However, taking into consideration that the JAB considered the Applicant's appeal as involving her promotion to the Professional category and in view of the Respondent's comments on the matter, the Tribunal deems it necessary to examine whether, in a general way, the explicit refusal to promote the Applicant to the Professional category in 1986, under the 100 Series of the Staff Rules, as well as the implied one in 1989, was tainted by some irregularity or motivated by factors extraneous to the interests of the service.

IV. The Tribunal notes in this connection that, in various communications, it was indicated to the Applicant that her promotion to the Professional category under the 100 Series of the Staff Rules was subject to her obtaining a university diploma equivalent to a Master's degree, and that the diploma which she held from the "Advanced School of Journalism" lacked equivalency. The Tribunal also notes that the Applicant has commenced studies at the University of Georgetown (Guyana) leading to a diploma that meets the equivalency requirement. In the Tribunal's view, given the UNDP policy regarding promotion of staff to the Professional category, the Administration did not commit any wrong in denying the Applicant a promotion until she obtained the required diploma, notwithstanding the quality of her services and

the importance of her responsibilities. Also, there is no evidence of discrimination against the Applicant. The Tribunal sees no reason to take issue with the conclusion of the JAB that, far from being discriminated against, the Applicant had been given assignments by the Administration to accommodate her personal convenience, while being repeatedly encouraged to pursue university studies required to obtain, eventually, the promotion she sought.

V. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Hubert THIERRY
Member

Mikuin Leliel BALANDA
Member

Geneva, 29 June 1992

R. Maria VICIEN-MILBURN
Executive Secretary